

**Distributed By  
Secretary of the SENATE  
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relating to human services; sitting forth appeal procedure for recipients of case management services; amending Minnesota Statutes 1986, sections 256.045, subdivisions 1, 3, 4, 5, 6, 7, and 10, and by adding a subdivision; repealing Minnesota Statutes 1986, section 256.045, subdivision 2.

BE IT ENACTED BY THE LEGISLATORS OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 256.045, subdivision 1, is amended to read:

Subdivision 1. (POWERS OF THE STATE AGENCY.] The commissioner of human services may appoint one or more state welfare human services referees to conduct hearings and recommend orders in accordance with Subdivision-3 subdivisions 3, 4a, and 5. the commissioner may appoint one or more local welfare referees to conduct hearings and issue rulings pursuant to subdivision 2, in counties requesting local welfare hearings. Welfare Human services referees designated pursuant to this section may administer oaths and shall be under the control and supervision of the commissioner of human services and shall not be a part of the office of administrative hearings established pursuant to sections 14.48 to 14.56.

Sec. 2. Minnesota Statutes 1986, section 256.045, subdivision 3, is amended to read:

Subd. 3. [STATE AGENCY HEARINGS.] in counties in which the

commissioner of human services has not appointed a local welfare referee. Any person applying for, receiving or having received any of the forms of public assistance described in subdivision 2 public assistance or a program of social services granted by a local agency pursuant to sections 256.72 to 256.879, chapters 256B, 256D, 256E, 261, or the federal Food Stamp Act whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated, or claimed to have been incorrectly paid, or any patient or relative aggrieved by an order of the commissioner under section 252.27, may contest that action or decision before the state agency by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or decision, or within 90 days of such written notice if the applicant, recipient, patient or relative shows good cause why the request was not submitted within the 30 day time limit. A local agency or party aggrieved by a ruling of a local welfare referee may appeal with ruling to

the state agency by filing a notice of appeal with the state agency within 30 days after receiving the rulings of the local welfare referee. A state welfare human service's referee shall conduct a hearing on the matter and shall recommend an order to the commissioner of human services. In appeals from rulings of local welfare referees, the hearing may be limited upon

Sec. 3. Minnesota Statutes 1986, section 256.045, subdivision 4, is amended to read:

Subd. 4. [CONDUCT OF HEARINGS.] All hearings held pursuant to subdivision 8-e\*-9 3 or 4a shall be conducted according to the provisions of the federal Social Security Act and the regulations implemented in accordance with that act to enable this state to qualify for federal grants in aid, and according to the rules and written policies of the commissioner of human services. The hearing shall not be held earlier than five days after filing of the required notice with the local or state

agency. The local welfare referee or state welfare human services referee shall notify all interested persons of the time, date and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel or other representative of their choice at the hearing and may appear personally, testify and offer evidence, and examine and cross-examine witnesses. The applicant, recipient, or former recipient shall have the opportunity to examine the contents of the case file and all documents and records to be used by the local agency at the hearing at a reasonable time before the date of the hearing and during the hearing. All evidence, except that privileged by law, commonly accepted by reasonable people in the conduct of their affairs as having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be "a contested case" within the meaning of section 14.02, subdivision 3.

Sec. 4. Minnesota Statutes 1986, section 256.045, is amended by adding a subdivision to read:

Subd. 4a. [CASE MANAGEMENT APPEALS.] Any recipient of case management services pursuant to section 256B.092, subdivisions 1 to 1b who contests the local agency's action or failure to act in the provision of those services, other than a failure to act with reasonable promptness or a suspension, reduction, denial, or termination of services, must submit a written request for review to the local agency. The local agency shall inform the commissioner of the receipt of a request for review when it is submitted and shall schedule a conciliation conference. The local agency shall notify the recipient, the commissioner, and all interested persons of the time, date, and location of the conciliation conference. The commissioner shall designate a representative to be present at the conciliation conference to assist in the resolution of the dispute without the need for a hearing. Within 30 days, the local agency shall conduct the conciliation conference and inform the recipient in writing of the action the local agency is going to take and when that

action will be taken and notify the recipient of the right to a hearing under this subdivision. The conciliation conference shall be conducted in a manner consistent with the procedures for reconsideration of an individual service plan or an individual habilitation plan pursuant to Minnesota Rules, parts 9525.0075, subpart 5 and 9525.0105, subpart 6. If the county fails to conduct the conciliation conference and issue its report within 30 days, or, at any time up to 90 days after the conciliation conference is held, a recipient may submit to the commissioner a written request for a hearing before a state human services referee to determine whether case management services have been provided in accordance with applicable laws and rules or whether the local agency has assured that the services identified in the recipient's individual service plan have been delivered in accordance with the laws and rules governing the provision of those services. The state human services referee shall recommend an order to the commissioner, who shall, in accordance with the procedure in subdivision 5, issue a final order within 60 days of the receipt of the request for a hearing, unless the commissioner refuses to accept the recommended order, in which event a final order shall issue within 90 days of the receipt of that request. The order may direct the local agency to take those actions necessary to comply with applicable laws or rules.

Sec. 5. Minnesota Statutes 1986, section 256.045, subdivision 5, is amended to read:

Subd. 5. [ORDERS OF THE COMMISSIONER OF HUMAN SERVICES.]  
The commissioner of human services may accept the recommended order of a state welfare human services referee and issue the order to the local agency and the applicant, recipient, or former recipient. The commissioner on refusing to accept the recommended order of the state welfare human services referee, shall notify the local agency and the applicant, recipient, or former recipient of that fact and shall state reasons therefor and shall allow each party ten days' time to submit additional written argument on the matter. After the expiration of the ten

day period, the commissioner shall issue an order on the matter to the local agency and the applicant, recipient, or former recipient. Any order of the commissioner issued in accordance with this subdivision shall be conclusive upon the parties unless appeal is taken in the manner provided by subdivision 7.

Sec. 6. Minnesota Statutes 1986, section 256.045, subdivision 6, is amended to read:

Subd. 6. [ADDITIONAL POWERS OF THE COMMISSIONER; SUBPOENAS.] The commissioner of human services may initiate a review of any action or decision of a local agency and direct that the matter be presented to a state welfare human services referee for a hearing held pursuant to subdivision 3 or 4a. In all matters dealing with public-welfare human services committed by law to the discretion of the local agency, the commissioner's judgment may be substituted for that of the local agency. The commissioner may order an independent examination when appropriate. Any party to a hearing held pursuant to subdivision 2 or 3 or 4a may request that the commissioner issue a subpoena to compel the attendance of witnesses at the hearing.

Sec. 7. Minnesota Statutes 1986, section 256.045, subdivision 7, is amended to read:

Subd. 7. [JUDICIAL REVIEW.] Any party who is aggrieved by an order of the commissioner of human services may appeal the order to the district court of the county responsible for furnishing assistance by serving a written copy of a notice of appeal upon the commissioner and any adverse party of record within 30 days after the date the commissioner issued the order, and by filing the original notice and proof of service with the court administrator of the district court. Service may be made personally or by mail; service by mail is complete upon mailing; no filing fee shall be required by the court administrator in appeals taken pursuant to this subdivision. The commissioner may elect to become a party to the proceedings in the district court. Any party may demand that the commissioner furnish all parties to the proceedings with a copy of the decision, and a transcript of any testimony, evidence, or other supporting

papers from the hearing held before the state welfare human services referee, by serving a written demand upon the commissioner within 30 days after service of the notice of appeal.

Sec. 8. Minnesota Statutes 1986, section 256.045, subdivision 10, is amended to read:

Subd. 10. [PAYMENTS PENDING APPEAL.] If the commissioner: of human services local welfare referee or district court orders monthly assistance or aid or services paid or provided in any proceeding under this section, it shall be paid or provided pending appeal to the commissioner of human services, district court, court of appeals, or supreme court.

S«C», 9. [REPEALER.]

Minnesota Statutes 1986, section 256.045, subdivision 2, is repealed.

Sec 10. [EFFECTIVE DATE.]

Sections 1 to 9 are effective 30 days after final enactment.

## Attachment 2

### EXAMPLES OF APPEAL ISSUES SUBJECT TO THE CONCILIATION PROCESS

#### EXAMPLE 1

LG is an adult who needs day program services. The individual service plan developed for LG specifies that day program services are to be provided five days per week. These services are provided at the frequency identified.

LG, however, is not satisfied with his current day program. LG feels that he needs a program which will provide him with the opportunity to work in a regular work setting. What is being provided is a combination of in house programs in cooking, money management, and language skills and two afternoons a week of community orientation training that consists of accompanying staff and three other clients of the day program to various community sites.

This example represents a situation in which the services are provided at a frequency consistent with the service plan. The service plan fails, however, to clearly specify the nature of the services to be provided and the outcomes expected. Because no direction has been given, the services provided fail to meet LG's expectations. Because he is not satisfied with these services, LG should use the conciliation conference to discuss how these day programs services are delivered, and the appropriateness of the individual service plan and individual habilitation plan in meeting the outcomes that LG desires.

#### EXAMPLE 2

JB is a young woman who receives services in a supported living arrangement. The services provided to JB include twenty-four hour a day supervision, training in homemaking, self care, and leisure time activities. JB also receives day program services.

JB has a number of complex service needs related to physical impairments and other health concerns. During the assessment of JB's needs, her ability to communicate was not thoroughly evaluated. JB is unable to speak in an understandable manner and appears to have deficits in her ability to hear. She is generally understood only by persons who are very familiar with her particular gestures and utterances. Because only limited attention was given to this area during the assessment phase of her service planning, no communication services were recommended or included in her individual service plan.

JB's representative may bring to the attention of the county through the conciliation conference, JB's need for communication services as part of her overall treatment plan. The basis of her request for a conciliation conference would be that the ISP is inadequate because it fails to adequately assess and address a need for service in a particular area. As part of this conciliation conference, JB's representative may argue that the assessment of JB's communication skills did not adequately represent the level of her need in this area, and did not result in the provision of a service which is essential to her integration into the community.

### EXAMPLE 3

DC lives in an ICF/MR with eleven other residents. The goals in DC's individual service plan include improving his use of leisure time by teaching him to use community resources. His individual habilitation plan includes as the methodology for accomplishing this goal, scheduled visits to the YMCA for weight lifting and swimming at least twice weekly, attendance of activities of his choice that are sponsored by his church, and biweekly use of other resources such as movie theaters, restaurants, and libraries.

DC is dissatisfied with the services provided to him because the facility has not implemented his program as established. This is due to staffing difficulties at the ICF/MR. In an attempt to provide programming the ICF/MR has substituted other types of activities which do not particularly interest DC and do not provide him with individualized opportunities to plan and use community resources. The county case manager is aware of the problem, but has not taken steps to assure that the problem with the provider is resolved.

DC's concerns with the implementation of his individual service plan and individual habilitation plan should be addressed in the conciliation process.